| | Case 3:08-cv-02907-MHP Document | 15 Filed 08/05/08 Page 1 of 4 |
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| 1 2 3 4 5 6 7 8 | | ES DISTRICT COURT |
| 10 | | TRICT OF CALIFORNIA |
| 11 | SAN FRAN | ICISCO DIVISION |
| 12 | | |
| 13 | DANIEL KEATING-TRAYNOR on | Case No. CV-08-2907-MHP |
| 14 | behalf of himself and all others similarly situated; | STIPULATION AND [PROPOSED] |
| 15 | Plaintiffs, | ORDER TO ALLOW COMCAST INC. TO FILE ITS MOTION TO DISMISS |
| 16 | VS. | PLAINTIFF'S COMPLAINT PRIOR TO THE INITIAL CASE MANAGEMENT |
| 17 | AC SQUARE INC.; COMCAST INC.; | CONFERENCE |
| 18 | AFSHIN GHANEH; ANDREW BAHMANYAR; AND DOES 1-60 | |
| 19 | INCLUSIVE; | Honorable Marilyn H. Patel |
| 20 | Defendants. | |
| 21 | | |
| 22 | | |
| 23 | Plaintiff Daniel Keating-Traynor, by and through his attorney, Daniel Berko, and | |
| 24 | Defendant Comcast Inc. ("Comcast") by and | through its attorneys Morgan, Lewis and Bockius |
| 25 | LLP, hereby stipulate as follows: | |
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| 27 | /// | |
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| | DB2/20781844.2 | Case No. CV-08-2907-MHP STIPULATION AND [PROPOSED] ORDER |

| 1 | <u>RECITALS</u> |
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| 2 | A. On June 11, 2008, the Court set the Initial Case Management Conference in this |
| 3 | action for September 14, 2008. See Docket No. 2 (Case No. CV-08-2907-MHP). |
| 4 | B. On July 10, 2008, Plaintiff served Comcast with the Summons and Complaint in |
| 5 | this action. |
| 6 | C On July 11, 2008, Defendants AC Square, Ghaneh, and Bahmanyar filed Ex Parte |
| 7 | Applications for Orders Allowing Defendants to File and Have Heard Motions to Dismiss |
| 8 | Pursuant to FRCP 12(b)(6) Prior to Initial Case Management Conference in Case No. CV-08- |
| 9 | 2907- MPH. See Docket Nos. 7, 8, and 9 (Case No. CV-08-2907-MHP). |
| 10 | D. On July 15, 2008, the Court granted Defendants AC Square, Ghaneh, and |
| 11 | Bahmanyar's Ex Parte Applications for leave to file their motions to dismiss by July 21, 2008. |
| 12 | The Court set the following related dates: Oppositions to be filed by August 4, 2008, Replies to |
| 13 | be filed by August 11, 2008, and Motion to be heard on August 25, 2008 at 2:00 p.m. See Docke |
| 14 | No. 10 (Case No. CV-08-2907-MHP). |
| 15 | E. On or about July 15, 2008, the parties agreed to an extension of time for Comcast |
| 16 | to file a response to Plaintiff's Complaint, up to and including July 30, 2008. |
| 17 | F. On July 16, 2008, the Court ordered Case No. CV-08-2907 and Case No. CV-08- |
| 18 | 3035 related. See Docket No. 11 (Case No. CV-08-2907-MHP) and No. 16 (Case No. CV-08- |
| 19 | 3035-EDL). |
| 20 | G. On July 17, 2008, Case No. CV-08-3035-EDL was reassigned to the Honorable |
| 21 | Judge Marilyn H. Patel. |
| 22 | H. Federal Rule of Civil Procedure 12(a)(1)(A)(i) requires a defendant to file an |
| 23 | answer to a complaint within 20 days after being served, and that Federal Rule of Civil |
| 24 | Procedure, Rule 12(b) allows a defendant to serve a motion to dismiss in lieu of an answer. The |
| 25 | parties further agree that absent a Court Order allowing for an exception, Standing Order Numbe |
| 26 | 4 prevents Defendant from filing the accompanying motion to dismiss until after the Initial Case |
| 27 | Management Conference on September 15, 2008. |
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TERMS OF STIPULATION 1 1. The parties jointly request that the Court allow Comcast to have its motion to 2 3 dismiss heard before the Initial Case Management Conference set for September 15, 2008 (Case No. CV-08-2907-MHP). 4 2. Defendant's motion seeks dismissal of Plaintiff's Complaint, in its entirety, 5 without leave to amend. Should the Court decide to dispose of Plaintiff's claims against Comcast 6 7 prior to the Initial Case Management Conference, Comcast could avoid incurring legal fees and costs by not having to file an answer or make initial disclosures. 8 3. The parties recognize that this Court granted on July 15, 2008 an *ex parte* motion 9 the other defendants brought for this same purpose in this action, and believe it should not be 10 necessary to burden the Court with another such motion. 11 Based on the foregoing and in the interest of judicial economy, the parties agree 4. 12 that Defendant should be allowed to file its motion at the earliest possible stage of this litigation. 13 IT IS SO STIPULATED. 14 15 Dated: July 30, 2008 LAW OFFICES OF DANIEL BERKO 16 17 /s/ Daniel Berko BvDaniel Berko 18 Attorneys for Plaintiff Daniel Keating-Traynor 19 20 Dated: July 30, 2008 MORGAN, LEWIS & BOCKIUS LLP 21 22 By /s/ Daryl S. Landy 23 Daryl S. Landy Attorneys for Defendant 24 COMCAST INC. 25 26 27 28

| 1 | IT IS SO ORDERED that: |
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| 2 | The parties' request to allow Defendant to file the attached Motion to Dismiss Plaintiff's |
| 3 | Complaint is granted. Defendant shall file and serve the motion by no later than |
| 4 | August 11, 2008. The hearing on this motion is set for September \$\hat{\mathcal{s}}\$, 2008, at 2:00 |
| 5 | p.m. Any opposition to the motion shall be filed and served by <u>August 25</u> , 2008. |
| 6 | Any reply to the opposition shall be filed and served by <u>September 2</u> , 2008. |
| 7 | TES DISTRICA |
| 8 | ETAL |
| 9 | Dated: August 1, 2008 By: United States District Company ERFD |
| 10 | IT IS SO ORDERED |
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| 12 | Judge Marilyn H. Patel |
| 13 | DISTRICT OF CENTER |
| 14 | PADISTRICTOR |
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